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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS, EX REL. ROBERT L. GORDON, DIRECTOR OF LABOR, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED JANUARY 14, 1946.

CERTIORARI GRANTED FEBRUARY 25, 1946.

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Proceedings in Supreme Court of Illinois	1	1
Caption	1	1
Abstract of record from Circuit Court of Cook County	3	1
Complaint	5	1
Motion of Francis B. Murphy to dismiss	10	4
Order on stipulation as to parties	10	4
Answer and counterclaim of the United States	11	5
Complaint in equity by Francis B. Murphy for the foreclosure of lien	14	8
Exhibit "A"—Notice of lien for contributions under the Illinois Unemployment Compensation Act	24	15
Order of consolidation	25	16
Answer of Maurice S. Weigle and William Fisher, Trustee	26	16
Decree	27	17
Order granting Director of Labor priority to the extent of 90% and to the Collector of Internal Revenue, 10% of the sum in the hands of the Clerk of the Circuit Court	29	19

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—2004

	Original	Print
Excerpts from appellee's brief	31	20
Argument and submission	32	20
Opinion, Smith, J.	34	21
Judgment	46	34
Notice of intention to apply for rehearing	48	35
Petition for rehearing	51	35
Order denying petition for rehearing	59	40
Modified opinion	61	41
Order recalling and staying mandate	80	54
Praecipe for record	82	55
Clerk's certificate (omitted in printing)	84	
Order extending time to file petition for certiorari	85	56
Order allowing certiorari	86	56

[fols. 1-4]

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

APPEAL, CIRCUIT COURT, COOK COUNTY

42C 1555

43C 3428

No. 28490

WILLIAM FISHER, Trustee for the Benefit of Creditors of Advertising Review Publishing Co., a corporation, Plaintiff below in cause General No. 42C 1555.

PEOPLE ex rel. FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Appellee,

vs.

CARTER H. HARRISON, etc., et al., and ADVERTISING REVIEW PUBLISHING COMPANY, a Corporation,

ON APPEAL OF UNITED STATES OF AMERICA, Appellant

[fol. 5] **Abstract of Record from Circuit Court of Cook County**—Filed November 27, 1944

COMPLAINT—Filed February 11, 1942

Complaint filed on the 11th day of February, A. D. 1942, alleges:

1. On January 9, 1939, the Advertising Review Publishing Co., a corporation theretofore doing business in the [fol. 6] City of Chicago, at 605 Michigan Avenue in said city did sell, assign, transfer and set over to the plaintiff William Fisher, as Trustee, all of its right, title and interest in and to the assets of the said Advertising Review Publishing Co. for the benefit of its creditors.

2. Since said date the plaintiff William Fisher, as Trustee for the benefit of the creditors of the Advertising Review Publishing Co. has diligently sought to reduce the assets

so set over, transferred and assigned to him into cash, and the said William Fisher has realized from the assets of said estate the sum of $1,734.40; that during the two years of his administration of said estate there have been charged against said assets an aggregate amount of costs of administration totaling $481.29. The plaintiff now holds as Trustee for the benefit of the creditors of the said Advertising Review Publishing Co. the sum of $1,253.11; that there are no further assets of said Advertising Review Publishing Co. which have come to the knowledge or attention of this plaintiff and this plaintiff state upon information and belief that the sum which he holds as aforesaid constitutes all of the assets of said corporation.

3. That the defendant Carter H. Harrison, Collector of Internal Revenue has filed with the plaintiff claims for taxes as follows:

Capital stock tax for the year 1939, tax $47.23, penalty $11.50. Total $58.73 on which the said defendant claims interest at the rate of 6% per annum.

Social Security Title IX for the year 1938, tax $1,038.56, penalty $245.80, total $1,284.36 plus interest at the rate of 6% per annum from January 11, 1940.

[fol. 7] Social Security Title VIII for the taxable period ending October, 1937, tax $12.87, penalty $2.86 with interest from January 6, 1940, at 6% per annum.

Social Security Title VIII for the taxable period ending November, 1937, tax $39.72, penalty $8.87 with interest from January 6, 1940, at 6% per annum.

Social Security Title VIII for the taxable period ending December, 1937, tax $105.02, penalty $23.56 with interest from January 6, 1940, at 6% per annum.

Social Security Title VIII for the taxable period ending March 31, 1938, tax $253.41, penalty $57.61 with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending June 30, 1938, tax $178.66, penalty $41.18 with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending September 30, 1938, tax $152.63, penalty $35.68, with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending December 31, 1938, tax $124.04, penalty $29.41 with interest from January 6, 1940 at 6% per annum.

that the defendant Francis B. Murphy or his predecessor in office Martin P. Durkin as Director of Labor in the State of Illinois has filed with the plaintiff the claim of the Division of Unemployment Compensation of the Department of Labor of the State of Illinois its claim for contributions and interest due it in the sum of $721.29 with interest after January 25, 1939 at the rate of 1% per month.

4. The defendants herein have asserted various and conflicting claims of priority and have threatened to hold the [fol. 8] plaintiff liable for any sums distributed to the other defendant; and the plaintiff despite his diligence has been unable to determine how said sum should be distributed.

5. The plaintiff William Fisher as Trustee for the benefit of creditors of said Advertising Review Publishing Co. has always been and is now willing to pay the funds in his hands as such Trustee as aforesaid to or on account of any and all of the persons as shall be in law entitled to said funds. The plaintiff, William Fisher, as Trustee has investigated the validity of the foregoing described tax claims and states upon information and belief that the same are true and correct and he offers to bring the funds remaining in his hands as aforesaid into court and to pay said sum over to the defendants or such of them as the court may direct or in the alternative to pay said sums into the office of the Clerk of this Court to be distributed by him as the court may hereafter adjudge, order or decree.

6. That the plaintiff William Fisher as Trustee for the benefit of the creditors of Advertising Review Publishing Co. has required the service of counsel in preparing and filing this Complaint in Chancery for Interpleader and will require the further services of counsel to protect the interests of the plaintiff as Trustee for the benefit of the creditors of the said Advertising Review Publishing Co.; that for this purpose he has retained the firm of Goldberg and Weigle; the reasonable fees to which they may be entitled for the protection of the funds remaining in the hands of the plaintiff as aforesaid should be chargeable against said funds as part of the cost of administration of this estate.

[fol. 9] 7. The plaintiff William Fisher as Trustee for the benefit of creditors of the said Advertising Review Publishing Co. has in no way colluded with either or both of the

defendants nor has this bill of interpleader been filed at the request or instigation of either of said defendants but solely and entirely to permit the funds remaining in his hands as Trustee to be distributed to such person or persons as shall in law be entitled thereto and to prevent any possible surcharge against the plaintiff as Trustee.

Wherefore the plaintiff prays:

A. That the defendants and each of them set forth by their answers to this complaint the exact amounts to which they claim they are entitled and that they shall thereafter settle between them all of the issues and controversies arising out of the conflicting claim to priority in said funds.

B. That this court shall determine the reasonable attorneys fees to be allowed and paid to the attorneys for the plaintiff for the preparation, filing and prosecution of this bill of interpleader and shall order the plaintiff to pay to said attorneys such sum as shall thereby be allowed to them out of the remaining assets of the trust estate as a proper cost of administrator thereof.

C. That upon making payment as decreed by the court to the attorneys and to the defendants or either of them or to the Clerk of the Court for their benefit, thereupon the plaintiff William Fisher as Trustee for the benefit of creditors of the said Advertising Review Publishing Co. shall be discharged as Trustee and freed of any interest herein save only as a nominal plaintiff.

[fol. 10] MOTION OF FRANCIS B. MURPHY TO DISMISS

Motion of Francis B. Murphy, Director of Labor of the State of Illinois, to dismiss the suit wherein it is stated:

That it appears on the face of the complaint that the Court has not jurisdiction of the person of the co-defendant, Francis B. Murphy, Director of Labor of the State of Illinois.

ORDER ON STIPULATION AS TO PARTIES

Order on stipulation wherein it is ordered as follows:

1. The United States of America be added as an additional party defendant in the within cause.

2. Summons issued against The United States of America to be served upon The United States District Attorney for the Northern District of Illinois.

3. That paragraph 3 of the complaint heretofore filed herein be and the same is hereby amended on its face by adding after the third word of said paragraph the following:

"The United States of America acting by and through."

4. The defendant, Carter H. Harrison, Collector of Internal Revenue, be dismissed as a party defendant without costs.

5. The cause continue as to the defendants, The United States of America and Francis B. Murphy, Director of Labor of the State of Illinois.

6. The motion of the defendant, Francis B. Murphy, Director of Labor of the State of Illinois heretofore filed herein shall stand as his motion to the complaint amended as aforesaid; and

[fol. 11] 7. That this order shall be without prejudice, in any way, to the plaintiff, William Fisher, Trustee for the benefit of creditors of Advertising Review Publishing Co., a corporation.

ANSWER AND COUNTERCLAIM OF THE UNITED STATES

Answer and Counterclaim of the United States of America, defendant, wherein it is stated:

1. It admits the allegations in Paragraph 1 of the Complaint.

2. It admits the allegations of Paragraph 2 of the Complaint.

3. Answering Paragraph 3 of the Complaint defendant admits that portion of the Complaint which sets out in detail claims of Carter H. Harrison, Collector of Internal Revenue, as claims for taxes due the United States Government, and neither admits nor denies that part of the said paragraph which states that the defendant, Francis B. Murphy or his predecessor in office, Martin P. Durkin, as Director of Labor in the State of Illinois, filed a claim of the Division of Employment Compensation of the Department of Labor of the

State of Illinois for $721.29, but demands strict proof thereof.

4. Answering Paragraph 4 of said Complaint the defendant neither admits nor denies but demands strict proof thereof and further answering counterclaims that under and by virtue of Section 3466 of the United States Revised Statutes, defendant is entitled to priority of allowance and payment of its claim over and above any and all creditors with the exception of costs of administration.

5. Answering Paragraph 5 of said complaint, the defendant neither admits nor denies the allegations therein con- [fol. 12] tained but again affirmatively pleads Section 3466 of the United States Revised Statutes as set forth in Paragraph 4 of this Answer.

6. Answering Paragraph 6 of said Complaint, defendant denies that any fee should be allowed to any counsel or attorney for the plaintiff herein for filing Complaint herein and further answering says that it is a well established rule of law in cases of Interpleader, that attorney fees for plaintiff's attorney are now allowable against the subject matter of the Interpleader.

7. Answering Paragraph 7 of the said Complaint defendant is not in a position to know the facts therein pleaded and demands strict proof thereof.

Answering subsection A of Paragraph 7 of said Complaint, defendant states that defendant is entitled to the following sums, to-wit:

Capital stock tax for the year 1939, tax $47.23, penalty $11.50. Total $58.73 on which the said defendant claims interest at the rate of 6% per annum.

Social Security Title IX for the year 1938, tax $1,038.56, penalty $245.80, total $1,284.36 plus interest at the rate of 6% per annum from January 11, 1940.

Social Security Title VIII for the taxable period ending October, 1937, tax $12.87, penalty $2.86 with interest from January 6, 1940, at 6% per annum.

Social Security Title VIII for the taxable period ending November, 1937, tax $39.72, penalty $8.87 with interest from January 6, 1940, at 6% per anuum.

Social Security Title VIII for the taxable period ending December, 1937, tax $105.02, penalty $23.56 with interest from January 6, 1940 at 6% per annum.

[fol. 13] Social Security Title VIII for the taxable period ending March 31, 1938, tax $253.41, penalty $57.61 with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending June 30, 1938, tax $178.66, penalty $41.18 with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending September 30, 1938, tax $152.63, penalty $35.68, with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending December 31, 1938, tax $124.04, penalty $29.41 with interest from January 6, 1940 at 6% per annum.

Further answering subsection B of Paragraph 7 of the complaint, defendant denies that any attorney fees shall be allowed plaintiff for the preparation, filing and prosecution of the Bill of Interpleader.

Further answering subsection C of Paragraph 7 of the Complaint defendant admits allegations thereof.

Further answering subsection D of Paragraph 7 of the Complaint defendant denies that a permanent restraining order or injunction should be issued for the benefit of the trustee.

Wherefore, the United States of America, defendant in this said counterclaim prays:

(a) That the Court enter a decree denying to the Attorneys for the plaintiff herein, an attorney's fee for the preparation and filing of the said Complaint in Chancery for Interpleader;

[fol. 14] (b) That the Court enter a decree denying to the plaintiff an injunction against this defendant restraining the collection of any and all sums from the plaintiff as trustee for the benefit of creditors of the Advertising Review Publishing Co., a corporation, unless and until any and all sums due to this defendant first be paid and satisfied or in the alternative unless and until all sums now in the hands of the complainant be paid this defendant on account of the claims hereinbefore set forth;

(c) That the Court enter a decree in accordance with Section 3466 of the United States Revised Statutes ordering the plaintiff to pay over to the United States of America the sum of $1253.11, being the amount now in the hands of said Trustee as shown by said Bill of Complaint, immediately after payment of Costs of Administration and before payment to any creditors.

COMPLAINT IN EQUITY BY FRANCIS B. MURPHY FOR THE FORECLOSURE OF LIEN—Filed April 2, 1943

Complaint in Equity filed on the 2nd day of April, A. D. 1943, by Francis B. Murphy, Director of Labor for the State of Illinois for the foreclosure of lien and the appointment of a Receiver wherein it is alleged:

(1) That at all times hereinafter mentioned plaintiff herein was and is now a sovereign body politic.

(2) That Francis B. Murphy is the Director of Labor of the Department of Labor of the State of Illinois; that as such he is an officer of the State Government of the State of Illinois, provided for by the Civil Administrative Code, being "An Act in Relation to the Civil Administration of the State Government," approved March 7, 1917, as [fol. 15] amended; that the Director of Labor of the State of Illinois is the Administrator of the Illinois Unemployment Compensation Act, as amended, and that the aforementioned Francis B. Murphy is the duly appointed, confirmed, qualified and acting Director of Labor of the Department of Labor of the State of Illinois.

(3) That the defendant, Advertising Review Publishing Company, a corporation, had in its employ one or more individuals performing services for it in the State of Illinois, subsequent to June 30, 1937.

(4) That said defendant Advertising Review Publishing Company, a corporation, had in its employment eight or more individuals on some portion of a day within each of twenty or more calendar weeks in the year 1937.

(5) That in accordance with the Illinois Unemployment Compensation Act, as amended, there accrued and became payable by the defendant Advertising Review Publishing Company, a corporation, to the Director of Labor of the

State of Illinois, contributions in a sum equal to 1.8% with respect to wages payable for employment occurring during the calendar year 1937, 2.7% with respect to wages payable for employment occurring during the years 1938, 1939 and 1940, and 2.7% with respect to wages paid for employment occurring during the year 1941 and thereafter. That pursuant to Section 18(a)(3) of the aforesaid Illinois Unemployment Compensation Act, as amended, interest has accrued upon such contributions at the rate of 1 per cent per month from the respective dates upon which such contributions became payable.

[fol. 16] (6) That pursuant to the power vested in him by the Illinois Unemployment Compensation Act, the Director of Labor of the State of Illinois did on to-wit, the 30th day of October, 1937, adopt Regulation No. 2 as amended, which provides as follows:

> "(a) Contributions for the six consecutive months beginning July 1, 1937, shall become due, and be paid, on or before the last day of January, 1938. On and after January 1, 1938, contributions shall become due and shall be paid quarterly on or before the last day of the month next following the calendar quarter for which such contributions have accrued; except that any employer who is delinquent in filing a contribution report or in paying his contributions for any calendar quarter may be required to report and to pay contributions on a calendar month basis. (The calendar quarters above referred to are three-month periods ending March 31, June 30, September 30 and December 31.)"

(7) That in accordance with the provisions of Section 18 of the Illinois Unemployment Compensation Act, as amended, and Regulation No. 2 as adopted by the Director of Labor on October 30, 1937, effective October 30, 1937, as amended, it became the duty of the defendant Advertising Review Publishing Company, a corporation, to pay to the Director of Labor, contributions with respect to wages payable for employment occurring during the year 1937 on or before January 31, 1938, and for employment occurring in the year 1938 and thereafter, quarterly, on or before the last day of the month next following the calendar quarter for which contributions accrued.

(8) That the claim of the Director of Labor of the State of Illinois is admitted by the defendant Advertising Re- [fol. 17] view Publishing Company, a corporation; that said defendant has admitted its indebtedness for contributions to be as follows:

Period	Wages	Contribution	Interest	Penalties	Paid on Account	Balance Due
1st qtr. 1938	$7992.59	$215.80	$126.83	—	—	$342.63
2nd qtr. 1938	6279.54	169.55	94.66	—	—	264.21
3rd qtr. 1938	5966.68	161.10	85.01	—	—	240.11
4th qtr. 1938	4994.38	134.85	67.11	—	—	201.96
						$1054.91

(9) That the liability for such contributions and the amount thereof is based upon reports filed by the defendant Advertising Review Publishing Company, a corporation.

(10) That demand for payment of said delinquent contributions, together with interest thereon at the rate of 1 per cent per month from the respective dates upon which said contributions were payable, and for the payment of the penalties due for failure to file contribution reports as above set forth, has been made upon the defendant, Advertising Review Publishing Company, a corporation, by the Director of Labor of the State of Illinois, but no part of said delinquent contributions or interest has been paid by the defendant Advertising Review Publishing Company, a corporation, or by anyone on its behalf; and said indebtedness is still a valid and subsisting obligation due and owing by the defendant Advertising Review Publishing Company, a corporation, to the Director of Labor of the State of Illinois.

[fol. 18] (11) That pursuant to Section 26 of the Illinois Unemployment Compensation Act, as amended which provides as follows:

> "(a) A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time

due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become due. In all cases where a report setting forth the amount of such contributions has been filed with the Director, no action to enforce such lien shall be brought after three years from the date of the filing of such report and in all other cases no action to enforce such lien shall be brought after three years from the date that determination and assessment of the Director made pursuant to the provisions of this Act became final."

there exists a continuing lien in favor of the Director of Labor of the State of Illinois upon all of the personal property or rights thereto owned by the defendant Advertising Review Publishing Company, A Corporation, on the 30th day of December, 1938, and used by it in connection with its trade, occupation, profession or business, and upon all such personal property or rights thereto, thereafter acquired by said defendant Advertising Review Publishing Company, A Corporation. That such lien is for a sum equal to the amount of contributions, and interest due from the defendant Advertising Review Publishing Company, A Cor-[fol. 19] poration, as above set forth.

(12) That on to-wit, the -- day of March, 1943, the Director of Labor of the State of Illinois caused to be filed with the Recorder of Deeds of Cook County in the State of Illinois, a notice of lien for contributions incurred by the aforementioned defendant Advertising Review Publishing Company, a corporation, for the contributions due for the four calendar quarters of the year 1938, which said notice of lien dated the 23rd day of March, 1943, was recorded by the aforesaid Recorder of Deeds as Document No. 13047396, a true and correct copy of which is attached hereto and made a part hereof, marked Plaintiff's Exhibit "A".

(13) That in accordance with the provisions of Section 26 of the Illinois Unemployment Compensation Act, as amended, it is the duty of the defendant, Advertising Review Publishing Company, A Corporation, to file in this proceeding, a full and complete schedule under oath, of all personal property and rights thereto which it owned at the

time the aforementioned contributions became due or which is subsequently acquired, and to indicate upon such schedule the property so owned by it which was or is used by it in connection with its trade, occupation, profession or business.

(14) That Paragraph 26(d) of the Illinois Unemployment Compensation Act, as amended, provides as follows:

> "(d) Priority of Lien. The lien herein created in favor of the Director shall be prior to all other liens whether general or specific, and shall be inferior only [fol. 20] to any claim for wages filed pursuant to 'An Act to protect employees and laborers in their claims for wages' approved June 15, 1887, as amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claim, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the Recorder of Deeds as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien, the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the Recorder of Deeds as in this Act provided."

(15) That the defendants, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, a Corporation, Maurice S. Weigle, and United States of America, each of whom claim to have some interest in the property being foreclosed by virtue of an assignment for the Benefit of Creditors, or having custody of the funds for the sale of goods and chattels of Advertising Review Publishing Company, a Corporation, or a lien of the United States Government, but that the respective interests of the aforementioned defendants, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, a Corporation, and Maurice S. Weigle and United States of America, are subordinate and inferior to the lien of the Director of Labor as herein set forth; that the lien of the said Director of Labor is paramount to any claim or interest of the aforesaid defendants, William [fol. 21] Fisher, Trustee for the Benefit of Creditors of Ad-

vertising Review Publishing Company, a Corporation, Maurice S. Weigle and United States of America.

(16) That the plaintiff is informed and believes and therefore states upon such information and belief that the aforesaid defendant Advertising Review Publishing Company, a Corporation, is insolvent and that the personal propefty subject to the lien herein being foreclosed, is scant security for the debt due the Director of Labor of the State of Illinois and that unless a Receiver be appointed for all of the said property pending a full and complete hearing upon the issues herein, the plaintiff will suffer financial loss and said property will be wasted.

Wherefore plaintiff prays:

(a). That the Court grant, without notice or Plaintiff's bond, the People's Writ of Injunction directed to the defendants Advertising Review Publishing Company, a Corporation, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, a Corporation, Maurice Weigle and United States of America, and "Unknown Owners", their agents, employees, attorneys and all creditors of the defendant Advertising Review Publishing Company, A Corporation, enjoining and restraining the aforementioned defendants, their agents, employees, attorneys and each of them from wasting, dissipating, concealing, selling, assigning, transferring, disposing of, encumbering or in any way or manner intermeddling with any of the personal property now or heretofore owned by the defendant, Advertising Review Publishing Company, A Cor- [fol. 22] poration, and restraining all creditors from bringing any proceeding or actions in law or in equity against the defendants Advertising Review Publishing Company, A Corporation, which touch upon its personal property or rights thereto used in connection with its business, without first having obtained leave of this Honorable Court.

Plaintiff alleges that his rights will be unduly damaged and that the Director of Labor will suffer irreparable injury if the said injunction prayed for in this cause is not issued forthwith and without notice, good cause having been shown that said injunction should issue without Plaintiff's bond; that if notice of application for injunction is given to the aforementioned defendants there is grave danger that they will dispose of, or otherwise transfer, assign, encumber or conceal the property of the defendant, Advertising Re-

view Publishing Company, A Corporation, and thereby defeat the purpose of said injunction.

(b) That an order be entered by this Honorable Court commanding that the defendant Advertising Review Publishing Company, A Corporation, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, A Corporation, and Maurice S. Weigle, file within a short day to be fixed by the Court, a full and complete schedule under oath, of all personal property and rights thereto, which Advertising Review Publishing Company, A Corporation, owned on the 30th day of December, 1942, or thereafter acquired, and to indicate upon such schedule the property so owned by it which was or is used by it in connection with its trade, occupation, profession or business.

[fol. 23] (c) That the defendants Advertising Review Publishing Company, a Corporation, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, a Corporation, and Maurice S. Weigle, be directed to pay to Francis B. Murphy, Director of Labor, the sum of $1054.91, together with interest at the rate of 1 per cent per month thereon as hereinabove set forth, plus the costs incurred in this proceeding, by a short day to be fixed by the Court and that in default thereof the property of the defendant Advertising Review Publishing Company, a Corporation, subject to the lien of the Director of Labor be sold to satisfy the amount so due; that in case of such sale the defendants and each of them and all persons claiming by or under them, may be forever barred and foreclosed of and from all right in or to the aforesaid property. That if the proceeds of such sale shall exceed the amount necessary to satisfy the claim of the Director of Labor and the costs of this proceeding, the balance if any, shall be paid to such parties as the Court shall find to be entitled thereto.

(d) That in the event the aforesaid property or rights thereto shall not bring at such sale a sufficient sum to pay the amount due to the Plaintiff, that the Plaintiff have judgment against such defendants as the Court shall find to be liable for the payment of such deficiency.

(e) That a Receiver be appointed for said property, and the rights thereto, upon the filing of this complaint, with

the usual powers of Receivers in Chancery, to take and have [fol. 24] immediate possession of said property, and to collect the rents, issues and profits arising out of said property, and disburse the same under the order and direction of this Court.

(f) And that said Plaintiff may have such other and further relief in the premises as the Court may in equity and good conscience see fit to decree.

EXHIBIT "A" TO COMPLAINT

Notice of lien for Contributions under the Illinois Unemployment Compensation Act referred to as Exhibit "A" on page 15 of the Abstract herein in the following form:

State of Illinois
Department of Labor
Division of Placement and Unemployment Compensation
222 West North Bank Drive
Chicago

Notice of Lien for Contributions Under the Illinois Unemployment Compensation Act

Account No. 26925-0165-27

Pursuant to Section 26 of the Illinois Unemployment Compensation Act, as amended, notice is hereby given that there is due to the Director of Labor of the State of Illinois, from the following named employer:

Advertising Review Publishing Company
605 North Michigan Avenue
Chicago, Illinois

contributions, together with interest and penalties thereon, as follows:

[fol. 25]

Period	Wages	Contribution Due	Interest	Penalties	Paid on Account	Balance Due
1st qtr. 1938	$7992.59	$215.80	$126.83	—	—	$342.63
2nd qtr. 1938	6279.54	169.55	94.66	—	—	264.21
3rd qtr. 1938	5966.68	161.10	85.01	—	—	246.11
4th qtr. 1938	4994.38	134.85	67.11	—	—	201.96
						$1054.91

plus additional interest upon the contributions set out above at the rate of 1% per month, or 1/30th of 1% per day, from the date of this notice until paid.

That, by virtue of the above named Section the amount of the aforesaid contributions, interest and penalties, together with such contributions, interest and penalties which may hereafter become due, are a lien, in favor of the Director of Labor of the State of Illinois, upon all the personal property or rights thereto, owned or hereafter acquired by the aforementioned employer, and used by it in connection with its trade, occupation, profession or business.

—— ——, Director of Labor.

Dated this 23rd day of March, 1943.

ORDER OF CONSOLIDATION

Order consolidating cases wherein it is ordered:

2. This case be, and the same is hereby consolidated with the case entitled William Fisher, Trustee for the benefit of Creditors of Advertising Review Publishing Company, a corporation *vs.* Carter H. Harrison, Collector of Internal Revenue and Francis B. Murphy, Director of Labor of the State of Illinois, which case is now pending in this Court as cause No. 42C 1555, and

3. That the time within which the defendants shall make answer herein, be, and the same is hereby extended to June 3, 1943.

[fol. 26]. ANSWER OF MAURICE S. WEIGLE AND WILLIAM FISHER, TRUSTEE

Answer of Maurice S. Weigle and William Fisher, Trustee, to the Complaint of the Director of Labor, wherein it is stated:

1. They admit the allegations contained in paragraphs 1 and 2 of the complaint.

2. That as to the allegations contained in paragraphs 3 to 14, inclusive, these defendants do not have sufficient information, and therefore demand strict proof of each of said allegations.

3. That as to the allegations contained in paragraph 15, the defendant, Maurice S. Weigle, states that he has no in-

terest and has never claimed any interest in the property or assets of the Advertising Review Publishing Company, a Corporation.

4. That the defendant, William Fisher, as Trustee for the Benefit of Creditors of Advertising Review Publishing Company, did file his bill of interpleader against Carter H. Harrison, Collector of Internal Revenue of the United States of America, and against Francis B. Murphy, as Director of Labor of the State of Illinois, in case No. 42 C 1555, pending in the Circuit Court of Cook County, Illinois, with which the within cause has heretofore been consolidated.

5. That the defendant, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, having marshaled all of the assets of said estate and having paid the proper cost of administration thereof up to date, presently holds for the benefit of creditors of said estate entitled thereto, the sum of $1,053.11, and there are no further assets of said Advertising Review Publish- [fol. 27] ing Company which have come to his knowledge, and the said William Fisher states, upon information and belief, that the said sum which he is holding constitutes all of the assets of the said Advertising Review Publishing Company.

Wherefore, having fully answered, the defendant, Maurice S. Weigle, prays that he be dismissed and discharged as a party defendant herein, and the defendant, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, prays that he be directed to pay over to the Clerk of the Circuit Court of Cook County, Illinois, the sum of $1,053.11, being all of the assets of said Advertising Review Publishing Company, and that thereupon he be discharged and dismissed as a party defendant and fully acquitted of all of his duties and responsibilities as Trustee for the Benefit of Creditors of Advertising Review Publishing Company, or for such other orders as to the Court may seem meet and proper in the premises.

Decree—February 18, 1944

Decree entered on the 18th day of February A. D. 1944, wherein the Court finds:

1. On January 9, 1939, Advertising Review Publishing Company, a corporation, did sell, assign, transfer and set

over to William Fisher, as Trustee, all of its right, title and interest in and to all of the property and assets of said Advertising Review Publishing Company for the benefit of its creditors.

2. That the said William Fisher, as Trustee, for the benefit of creditors of Advertising Review Publishing Company, did diligently reduce the assets so assigned to him to pos- [fol. 28] session and converted the same into cash, and he realized therefor the sum of One Thousand Seven Hundred Thirty Four and 40/100 Dollars ($1,734.40).

3. That various tax claims of the State of Illinois and of the United States of America were filed with the said Trustee against the assets in his possession in an amount exceeding the said sum of One Thousand Seven Hundred Thirty Four and 40/100 Dollars ($1,734.40).

4. That thereafter the said William Fisher, as Trustee, did engage the services of counsel and did thereafter file his complaint for interpleader herein, seeking the instruction of this Court as to the distribution to be made of the property in his hands as Trustee.

5. That during the period of the administration of the said Trust Estate disbursements aggregating Six Hundred Ninety Six Dollars and Twenty Nine Cents ($696.29) were made and the costs expended in this cause amounted to Twenty Seven Dollars and Thirty Cents ($27.30) so that the said Trustee presently holds in said Trust Estate the sum of One Thousand Ten Dollars and Eighty One Cents ($1,010.81).

6. That all of the said disbursements and costs incurred were properly incurred and properly expended in the administration of the said Trust Estate.

7. That the defendant, Maurice S. Weigle, has no interest, nor has he ever claimed any interest in the property or assets of the Advertising Review Publishing Company, a [fol. 29] corporation, and that he should be dismissed and discharged as a party defendant herein.

8. That said Trust Estate should be closed at the earliest possible moment and since the ultimate rights of the United States of America and the State of Illinois cannot be fixed with certainty at this moment,

It Is Therefore Ordered, Adjudged and Decreed that the said William Fisher, as Trustee of the benefit of creditors of Advertising Review Publishing Company, pay to the Clerk of the Circuit Court of Cook County the sum of One Thousand Ten Dollars and Eighty One Cents. ($1,010.81) within Seven (7) days from the date hereof and that upon so doing he be fully discharged and dismissed and fully acquitted of all of his duties and responsibilities as Trustee for the benefit of creditors of Advertising Review Publishing Company and that Maurice S. Weigle be discharged and dismissed as a party defendant herein.

ORDER GRANTING DIRECTOR OF LABOR PRIORITY TO THE EXTENT OF 90% AND TO THE COLLECTOR OF INTERNAL REVENUE, 10% OF THE SUM IN THE HANDS OF THE CLERK OF THE CIRCUIT COURT.

Order entered on the 29th day of February, A. D. 1944, as follows:

This matter coming up on hearing and the Court being fully apprised of the premises herein and having heard arguments made by opposing counsel with reference to the priority of the liens of the Director of Labor of the State of Illinois, over the claim of the Collector of Internal Revenue.

It Is Therefore Ordered, Adjudged and Decreed, that the lien of the Director of Labor of the State of Illinois, administrator of the Illinois Unemployment Compensation [fol. 30] Act, be given priority to the extent of 90 per cent of the funds now on deposit with the Clerk of the Circuit Court, and that the Collector of Internal Revenue have priority as to the 10 per cent remaining.

Notice of Appeal by the United States of America.

Proof of service of Notice of Appeal by the United States of America.

Praecipe for Record and Proof of Service to Clerk of the Circuit Court of Cook County.

Certificate of Clerk of the Circuit Court of Cook County to Transcript of Record.

J. Albert Woll, United States Attorney, Attorney for Appellant.

John B. Stephan, Assistant United States Attorney.

[fol. 31] IN SUPREME COURT OF ILLINOIS

EXCERPTS FROM APPELLEE'S BRIEF

And afterwards, to-wit: on the 6th day of January, A. D. 1945, the same being one of the days in vacation after the Term of Court aforesaid, there was filed in this office a certain brief of appellee the heading of Argument I on page six being in the words and figures following, to-wit:

> The extension of the priority given by Section 191, Title 31, U. S. C. (referred to as Section 3466) to liens or claims for unpaid unemployment compensation contributions so as to deprive the State of such contributions is inconsistent with the intent of Congress as expressed in the Social Security Act of 1935, Second Deficiency Appropriation Act of 1938, Section 1601 of the Internal Revenue Act of 1939 and Sections 601 and 602 of the Revenue Act of 1943.

And, also heading of Argument III, appearing on page twenty-nine of brief of appellee, which is in the words and figures following, to-wit:

> The claim of the Director of Labor is a secured claim and as such has complete priority over the unsecured claim of the United States.

[fols. 32-33] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ARGUMENT AND SUBMISSION—March 20, 1945

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motions

being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by John B. Stephan for appellant and by William C. Wines for appellee is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 34] IN THE SUPREME COURT OF ILLINOIS,

Docket Nos. 28474, 28490

Agenda 22—March, 1945

The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Chicago Waste & Textile Company et al.—(Carter H. Harrison, Collector of Internal Revenue, Appellant.)

The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Advertising Review Publishing Company et al.—(United States of America, Appellant.)

OPINION—May 23, 1945

Mr. Justice Smith delivered the opinion of the court:

These cases have been consolidated for opinion in this court. The issues involved are such that each case must be considered separately in this opinion. We will first consider cause No. 28474. That case is an appeal by Carter H. Harrison, Collector of Internal Revenue, from an order of the circuit court of Cook county, denying his claim for priority of payment. The claim for which priority of payment is sought is the amount of Federal insurance contribution taxes and Federal unemployment taxes due the Federal government from an insolvent employer. Appellee's claim as Director of Labor of the State of Illinois, against the same fund, is for unemployment compensation contributions, plus penalties, interests and costs due the State of Illinois. The amounts due both appellant and appellee accrued against Chicago Waste & Textile Com-

pany. A judgment was entered against that company in favor of one of its creditors in the municipal court of Chicago. An execution was issued and placed in the hands of the bailiff of the municipal court, whereupon appellee, as Director of Labor of the State of Illinois, on June 29, 1942, filed this suit in the circuit court of Cook county.

The purpose of the suit was to foreclose the tax lien for the unpaid unemployment compensation contributions due the State, for appointment of a receiver and for an injunction restraining the sale of the property under the execution. Upon the filing of the complaint, a receiver was appointed, as prayed. Thereafter, the property was liquidated by the receiver. The net amount arising from the liquidation of the property was $677.81, which the court ordered deposited with the clerk of the circuit court, subject to the further order of the court. The claim of appellant and the claim of appellee were each in an amount in excess of the amount of the funds on deposit.

On November 16, 1942, appellant filed his intervening petition. In this intervening petition, after reciting the filing [fol. 35] of the claim in the cause on October 9, 1942, he alleged that by virtue of section 3466 of the Revised Statutes of the United States, his claim was entitled to priority of payment to the extent of the funds on deposit with the clerk. To this intervening petition, appellee filed his answer in which he denied that the claim of appellant was entitled to priority of payment. He alleged that there was due the State of Illinois from the insolvent employer for unemployment compensation contributions, the sum of $738.49, plus penalties; that said contributions were a lien on the property of the insolvent employer; that notice of the lien had been filed in the office of the recorder, as required by statute; that the lien for contributions due the State of Illinois was entitled to priority of payment over the claim of appellant and all other creditors.

Upon a hearing it was adjudged that appellee was entitled to priority to the extent of 90 per cent of the funds on deposit with the clerk, and that appellant was entitled to priority as to the remaining 10 per cent of such funds. To review that order, appellant, as Collector of Internal Revenue, perfected an appeal to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

Appellant claims the right of priority of payment of the taxes due the Federal government under section 1600 of the Federal Unemployment Tax Act (26 U. S. C. 1600; formerly title IX of the Social Security Act,) under section 3466 of the Revised Statutes of the United States (31 U. S. C. 191,) which provides that whenever any person indebted to the United States is insolvent, or his estate is insufficient to pay all his debts, the debts due to the United States shall be first satisfied.

Appellee claims that taxes due the Federal government under the Federal Unemployment Tax Act are not such debts as are comprehended within the provisions of said section 3466 of the Revised Statutes. Appellee further contends that even though the taxes due the Federal government in this case are debts due the United States within the purview of said section 3466, the State of Illinois has a prior lien on the assets of the taxpayer for the amount due the State under section 26(a) of the Unemployment Compensation Act of Illinois. Ill. Rev. Stat. 1943, chap. 48, par. 243.

In the view we take, it will not be necessary to decide either of the above questions raised by the parties in this particular case. Section 1600 of the Federal Unemployment [fol. 36] Tax Act (26 U. S. C. 1600) imposes an excise tax equal to 3 per cent of the total wages paid during each calendar year upon all employers having eight or more employees. Section 1601(a) (26 U. S. C. 1601(a)) of said act provides that the taxpayer may credit against the taxes imposed by section 1600, the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State, which is certified for the taxable year as provided in section 1603. The Illinois Unemployment Compensation Act was approved and certified by the Federal Social Security Board as provided in said section 1603. Section 1601(c) provides that the total amount of credits allowed "shall not exceed 90 per centum of the tax against which such credits are allowed." Section 1601(a) (3) provides that such credit shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required by section 1604 to file a return for such year "except that credit shall be permitted for contributions paid after such last day, but before July 1 next following

such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last date." Section 1604 (26 U. S. C. 1604) fixes January 31, as the last day on which returns for the preceding calendar year shall be filed.

The claim of appellant is for taxes due the Federal government accruing in the years 1941 and 1942. The last due date of the return for the year 1941, under section 1604, was January 31, 1942. The last due date of the return for the year 1942 was January 31, 1943.

Section 602(b) of the Revenue Act of 1943 (26 U. S. C. 602(b),) provides: "Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, 1940, 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive * * * in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction * * *."

[fol. 37] The record in this case shows that the receiver was appointed on June 29, 1942. The receiver qualified on June 30, 1942. This was prior to the expiration of the last day on which the taxpayer was entitled to a credit on the Federal taxes for the year 1941, for payments made to the State. The assets were, therefore, in the custody and under the control of a receiver during the period from the last day upon which the taxpayer was required to file a return of the tax against which credit is claimed and June 30 next following such last day, inclusive. Such assets were also in the hands of the receiver during all the time subsequent to that period. Under section 602(b) of the Revenue Act of 1943, all limitations as to the time of payment, when the assets were in the hands of a receiver, were removed. The receiver was, therefore, at any time after his appointment, entitled to pay contributions for the years 1941 and 1942 to the State and was entitled to credit on the taxes due

the Federal government for the amounts paid to the State, up to 90 per cent of the taxes due the Federal government, for both years.

This brings us to a consideration of cause No. 28490. This case presents the questions on a different factual record from that presented by the record in cause No. 28474. This case is an appeal by the United States from a decree entered by the circuit court of Cook county. The appeal was also taken to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

The record shows that on January 9, 1939, Advertising Review Publishing Company made a general assignment of its assets and property to William Fisher, trustee, for the benefit of its creditors; that he had reduced the assets to cash and had remaining in his hands the net amount of $1253.11; that Carter H. Harrison, Collector of Internal Revenue, had filed claims with the trustee for capital stock tax and claims for taxes accruing under the Federal Unemployment Tax Act, aggregating more than the total amount of funds in the hands of the trustee. The director of the Department of Labor of the State of Illinois also filed claims with the trustee for unemployment compensation contributions due the State of Illinois in the amount of $721.29, plus interest.

On February 11, 1942, Fisher, the trustee, filed his complaint in this cause in the nature of an interpleader, asking for instructions of the court as to the distribution of the funds in his hands. The Collector of Internal Revenue [fol. 38], and the Director of the Department of Labor of the State of Illinois were both made parties defendant. On April 2, 1943, the Director filed his complaint in the circuit court in equity for the purpose of foreclosing [illegible] lien on the assets in the hands of the trustee for the unemployment compensation contributions due the State of Illinois. These two cases were thereafter consolidated. On order of the court, the funds in the hands of the trustee were impounded with the clerk of the court to abide the result of the suit. On motion and by leave granted, the United States of America was substituted as a party to the suit in lieu of the Collector of Internal Revenue, and he was dismissed out of the case.

Upon a hearing, a decree was entered finding that the lien of the Director of Labor of the State of Illinois on

the assets involved gave to him priority of payment to the extent of 90 per cent of the funds on deposit with the clerk and that the United States was entitled to priority of payment as to the remaining 10 per cent of said funds on deposit. From this decree the United States perfected the appeal.

What we have heretofore said in this opinion in disposing of cause No. 28474 has no application to this case, for the reason that the taxes involved in this case accrued in the year 1938 and prior years. The assets of the insolvent taxpayer were not in the custody or control of a receiver during any period mentioned in section 602(b) of the Federal Unemployment Tax Act, as enacted in the Revenue Code of 1943. The taxes with which we are here concerned were not subject to the provisions of that section.

Appellant claims the right of priority of payment of the taxes due the United States under the Federal Unemployment Tax Act because of the priority granted to the United States by section 3466 of the Revised Statutes of the United States (31 U. S. C. 191), which reads as follows: "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent [fol. 39] debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

Appellee, in an effort to demonstrate that it was not the intention of Congress that claims for taxes due under the Federal Unemployment Tax Act should be subject to the priority of payment provisions of said section 3466, has presented an interesting and illustrative argument. He has analyzed and presented both the State and Federal acts and their relations to each other. It is pointed out that the Federal act is not in itself a complete unemployment compensation law; that it merely provides for the collection of payroll taxes, but makes no provision for the payment of unemployment compensation to employees; that this function is left entirely to the States. It is further

pointed out that section 902 of the Social Security Act of 1935, which is section 1601 of the Internal Revenue Code of 1939, allowed a credit against the Federal taxes imposed for payments made into an approved State unemployment compensation fund to the extent of 90 per cent of the amount of the taxes due under the Federal act, if such payments were made to the State fund before the last due date of the Federal return of the employer; that the last due date of such return was January 31 of the year following that in which the wages were paid.

It is further pointed out that if payment of the State contributions was not made before the due date of the Federal return, and payment was made thereafter, but before June 30 next following such due date, a credit of 90 per cent of the credit, or 81 per cent, is allowed; that if the assets of the taxpayer are in the custody or control of a court of competent jurisdiction at any time between the last due date of the return and June 30 following, this limitation is removed and the full credit of 90 per cent is allowed; that by the Revenue Act of 1940, such limitation on the time of the payment, in order to obtain the credit, was extended to December 6, 1940; that if the assets of the taxpayer were in the hands of a receiver at any time during the fifty-nine day period following December 6, 1940, and such State contributions were paid by the receiver during that time, he would be entitled to credit for the amount paid to the State, up to 90 per cent of the Federal taxes; that by the Revenue Acts of 1941 and 1943, this policy was continued and the limitations as to the time of payment, in order to obtain the credit, were further extended.

From this it is argued that the provisions relating to credits allowed on the Federal taxes for unemployment [fol. 40] contributions paid to the State, up to 90 per cent of the taxes due the Federal government, were intended to encourage the employer to promptly pay his State contributions; that it was not contemplated by Congress in the enactment of this legislation that more than 10 per cent of the 3 per cent Federal payroll taxes should belong to the Federal government; that the purpose of Congress in providing that 10 per cent of the Federal taxes be paid to the Federal government, regardless of the amount which the taxpayer might pay to the State, was to create a fund for the use of the Federal government in the administra-

tion of the Federal act and its supervision of the administration of the State acts by the several States.

From this it is said that in reality the Federal taxes are levied only for the purpose of co-ordinating the administration of the acts of the several States with the Federal act, under the supervision of the National government. It is further contended that the primary purpose of the Federal act was to encourage the States to pass State unemployment compensation acts and to assist the States in the administration of such acts.

Upon this basis it is contended that it was the intention of Congress that the Federal taxes, except as to the amount of 3/10 of one per cent of the payrolls were, in fact, levied for the use and benefit of the States and that, other than the 10 per cent for which no credit can be taken for the payments into a State unemployment compensation fund, the Federal government has no interest therein; that such 10 per cent reserved to the Federal government is for the sole purpose of defraying the expenses of administering the acts.

This argument, however plausible and logical it may seem, loses sight of the fact that the taxes imposed by the Federal act at the rate of 3 per cent on the payrolls of those employers having eight or more employees, are taxes imposed by, and which belong to, the Federal government. All of the provisions pointed out concerning credits for taxes paid into the unemployment compensation fund of the State relate to the administration of the act. They are administrative in character. By the Federal act, taxes are levied at the rate of 3 per cent on the payroll of every employer in the United States employing eight or more persons. The act was sustained by the Supreme Court of the United States in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 57 S. Ct. 883, because the payments exacted [fol. 41] thereunder were found to be taxes levied under the powers conferred on Congress by section 8 of article I of the constitution. Such payments were held to be excise taxes.

Under the act, therefore, excise taxes are levied by the Congress upon employers at the rate of 3 per cent of their payrolls. The fact that the act makes provision for a reduction in the amount of the taxes, or a surrender or waiver of a portion thereof, equal to the amount paid by the taxpayer into an approved State unemployment compensation

fund, up to 90 per cent of the taxes due, does not change the character of the act as one levying or imposing taxes. The full amount of 3 per cent of the payroll constitutes taxes due the Federal government. The waiver of a portion thereof for the purpose of encouraging employers to promptly pay their State unemployment compensation contributions does not change the character of payment exacted by the Federal act. In the first instance, 100 per cent of the taxes levied constitute taxes due the Federal government. The full amount continues to be taxes due the Federal government either until it is all paid to the Federal government, or 90 per cent is paid to the State and the balance to the Federal government. The provisions of the act for credits equal to the amount paid to the State, up to 90 per cent of the taxes due the Federal government, being administrative in character, do not change the character of the taxes imposed. They are still taxes due the Federal government and constitute a debt due to the United States within the purview of section 3466 of the Revised Statutes.

The cases cited and relied upon by appellee are not in point. Those cases involved payments due the United States of an entirely different character from those here involved. *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, 50 S. Ct. 212, involved money due the United States under the Transportation Act of 1920.

Mellon v. *Michigan Trust Co.*, 271 U. S. 236, 46 S. Ct. 511, involved a claim due the Director General of Railroads for transportation charges against an insolvent corporation. In *United States* v. *Marcus*, 297 U. S. 206, 59 S. Ct. 811, the claim was for money due the Federal Housing Administrator. In neither of those cases was the claim for taxes due the United States.

It has been repeatedly held by the Supreme Court that taxes due the United States are debts due the United States, within the meaning of section 3466 of the Revised Statutes. *Price* v. *United States*, 269 U. S. 492, 46 S. Ct. 180; [fol. 42] *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 9 L. ed. 1017; *United States* v. *Bank of North Carolina*, 6 Pet. 29, 8 L. ed. 29.

Appellee also cites and relies on the case of *Ricard* v. *Bijou Furniture Co.*, 67 R. I. 251, 21 Atl. 2d 563. It is true this case sustains the contentions of appellee. However, we think the court in that case overlooked the fact

that taxes due under the Federal Unemployment Tax Act are taxes due the United States and, consequently, are debts due the United States within the scope of section 3466 of the Revised Statutes.

It is elementary that the priority given the United States by section 3466 cannot be impaired or superseded by State laws. *United States* v. *Oklahoma*, 261 U. S. 253, 67 L. ed. 638.

It follows that the claim of appellant was a debt due the United States from an insolvent debtor who had committed an act of bankruptcy under section 21 of chapter 3 of the Bankruptcy Act (11 U. S. C. 21), by making a general assignment for the benefit of its creditors. Such claim was, therefore, entitled to priority of payment out of the assets of the insolvent debtor, unless the State of Illinois had such a lien on such assets as would remove them from the priority rights granted by section 3466 of the Revised Statutes.

It is claimed by appellee that he did have such a lien. This contention is based upon section 26(a) of the Unemployment Compensation Act of Illinois. (Ill. Rev. Stat. 1943, chap. 48, par. 243.) That section, in so far as material, reads as follows: "A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

It is contended by appellant that the lien given by this section of the statute is not a perfected, fixed lien; that at most it is merely an inchoate right to a lien. It will be remembered that the only thing done by the Director to establish or to enforce such lien, as against the property [fol. 43] of the debtor, was the filing of this suit on April 2, 1943, whereas the assignment was made by the insolvent debtor on January 9, 1939. The right to priority of payment under section 3466 attaches, if at all, at the time of the assignment.

In the very late case of *United States* v. *Waddill, Holland & Flinn*, in an opinion filed January 2, 1945, the Supreme Court of the United States had before it a similar question. (65 S. Ct. 304.) The case arose in Virginia. The debtor had made an assignment for the benefit of creditors. Claims were made by the United States for unpaid taxes under the Federal Unemployment Tax Act and for a debt arising out of a Federal Housing Administration transaction. The landlord of the debtor, twelve days after the assignment was made, obtained a distress warrant, which was levied on the debtor's property. The applicable provisions of the statutes of Virginia gave to the landlord the right to levy distress for six months rent upon "any goods of the lessee * * * found on the premises, or which may have been removed therefrom not more than thirty days * * * for not more than six months rent." The distraining landlord claimed a lien on the property of the debtor and a priority of payment over the claim of the Federal government, based upon the lien given him by statute on the goods of the insolvent debtor. The Supreme Court of Virginia held that the provisions of the statute of that State, referred to, "give the landlord a lien which is fixed and specific and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment which are merely remedies for enforcement." In disposing of that question, the Supreme Court of the United States said:

"The words of section 3466 are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States. Thelusson v. Smith, 2 Wheat. 396, 425, 4 L. Ed. 271; United States v. Texas, supra, 314 U. S. at page 484; 62 S. Ct. at page 352, 86 L. Ed. 356. But this court in the past has recognized that certain exceptions could be read into this statute. The question has not been expressly decided, however, as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency or voluntary assignment. * * * It is within this suggested exception that the landlord and the municipality seek to bring themselves. [fol. 44] Once again, however, we do not reach a decision as to whether such an exception is permissible for we do not

believe that the asserted liens of the landlord and the municipality were sufficiently specific and perfected on the date of the voluntary assignment to cast any serious doubt on the priority of the claim of the United States. * * *

"The Supreme Court of Appeals of Virginia has here held that these sections 'give the landlord a lien which is fixed and specific, and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment, which are merely remedies for enforcing it.' 182 Va. at page 363, 28 S. E. 2d at page 746. It has also held that such a lien 'relates back to the beginning of the tenancy,' 182 Va. at page 364, 28 S. E. 2d at page 746, thus giving it force and effect on date of the voluntary assignment. These interpretations of the Virginia statutes, as propositions of state law, are binding. But it is a matter of federal law as to whether a lien created by state statute is sufficiently specific and perfected to raise questions as to the applicability of the priority given the claims of the United States by an act of Congress. If the priority of the United States is ever to be displaced by local statutory lien, federal courts must be free to examine the lien's actual legal effect upon the parties. A state court's characterization of a lien as specific and perfected, however conclusive as a matter of state law, cannot operate by itself to impair or supercede a long-standing Congressional Declaration of priority. * * *

"Tested by its legal effect under Virginia law, the landlord's lien in this instance appeared to serve 'merely as a caveat of a more perfect lien to come.' People of State of New York v. Maclay, supra, 288 U. S. at page 294, 53 S. Ct. at page 324, 77 L. Ed. 754. As of the date of the voluntary assignment, it was neither specific nor perfected. It gave the landlord only a general power over unspecified property rather than an actual interest in a definitive portion or portions thereof. * * *

"Nor was the statutory lien perfected as a matter of actual fact, regardless of how complete it may have been as a matter of state law. The tenant was divested of neither title nor possession by the silent existence of the landlord's statutory lien on the date of the assignment. Only after the lien was actually asserted and an attachment or a distraint levied, enabling the landlord to satisfy his claim out of the seized goods, could it be argued that

such goods severed themselves from the general and free [fol. 45] assets of the tenant from which the claims of the United States were entitled to priority of payment. Prior to that time the lien operated to do no more than prevent the removal of goods from the premises by certain classes of persons, Va. Code par. 5524, and give the landlord priority in distribution under state law provided that the goods remained on the premises. Such a potential, inchoate lien could not disturb the clear command of section 3466 of the Revised Statutes. Something more than a 'caveat of a more perfect lien to come' was necessary."

It seems to us that the above language of the court is conclusive in this case. We are forced to the conclusion that the taxes due the Federal government from the insolvent debtor in this case were debts due the United States within the purview of section 3466 of the Revised Statutes. It is equally clear that appellee did not have such a lien upon assets of the insolvent debtor, under section 26(a) of the Unemployment Compensation Act of Illinois, as to give him priority of payment over the claim of the Federal government. In view of this, appellant was entitled to priority of payment over the claim of the State of Illinois.

In cause No. 28474, the judgment of the circuit court is reversed and the cause is remanded to that court, with directions to enter an order directing the payment of the funds on deposit to the Director of the Department of Labor of the State of Illinois. The order will provide that the amount paid to the Director be credited on the claim of appellant against the insolvent debtor.

In cause No. 28490, the decree of the circuit court is reversed and the cause is remanded to that court, with directions to enter a decree finding that the United States is entitled to priority of payment to the extent of the funds on deposit, and ordering distribution accordingly.

Reversed and remanded, with directions.

[fols. 46-47] IN SUPREME COURT OF ILLINOIS

No. 28490

PEOPLE ex rel. FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Appellee,

vs.

CARTER H. HARRISON, etc., et al.; and ADVERTISING REVIEW PUBLISHING COMPANY, a Corporation,

On Appeal of United States of America, Appellant

Appeal from Circuit Court, Cook County

420 1555

430 3428

JUDGMENT—May 23, 1945

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the decree aforesaid, there is manifest error.

Therefore, it is considered by the Court that for that error and others in the record and proceedings aforesaid the decree of the Circuit Court of Cook County in this behalf rendered, Be Reversed, Annulled, Set Aside and Wholly for Nothing Esteemed, and this cause be remanded to the Circuit Court of Cook County with directions to enter a decree finding that the United States is entitled to priority of payment to the extent of the funds on deposit, and ordering distribution accordingly.

[fols. 48-50] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

NOTICE OF INTENTION TO APPLY FOR REHEARING—Filed May 31, 1945

To: Hon. Earle Benjamin Searcy, Clerk of the Supreme Court, Springfield, Illinois.

Hon. Edwin Hill Cooke, Official Reporter, Bloomington, Illinois.

You Are Hereby Notified that it is the intention of the People of the State of Illinois, appellee, to ask for a rehearing in the above entitled cause.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Appellee

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[fol. 51] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

PETITION FOR REHEARING—Filed June 16, 1945

Appellee, the Director of Labor, respectfully and earnestly requests a rehearing in this cause.

In support of this petition, it is submitted that:

[fol. 52] The Court Overlooked the Application of Section 602(a)(1) of the Revenue Act of 1943 (26 U. S. C. 602(a)(1)) and Thereby Unintentionally Committed Itself to a Serious Inconsistency with the Opinion Which it Rendered on the Same Day in the Consolidated Case, the People for the Use of Murphy v. Chicago Waste and Textile Company, et al., Docket No. 28474.

In *The People for the Use of Murphy v. Chicago Waste and Textile Company, et al.*, Docket No. 28474, consolidated for opinion with the instant case, this Court applied Section 602(b) of the Revenue Act of 1943 (26 U. S. C. 602(b)), and held that since the receiver in that cause was at any time after his appointment entitled to pay contributions for the years 1941 and 1942 to the State of Illinois and was entitled to credit against the taxes due the Federal Government the amounts paid to the State, up to 90 per

cent of the taxes due the Federal Government for both years, an order should be entered directing the payment of the funds on deposit to the Director of the Department of Labor of the State of Illinois, with a further provision that the amount paid to the Director be credited on the claim of the Federal Government against the insolvent debtor.

The instant case involves contributions for the year 1938, to which year Section 602(b) does not apply. However, under Section 602(a)(1) of the Revenue Act of 1943 (26 U. S. C. 602(a)(1)), the trustee for the benefit of the creditors of Advertising Review Publishing Company, at any time after February 25, 1944, was entitled to pay contributions for the year 1938 to the State of Illinois, and [fol. 53] upon payment thereof was entitled to credit against the taxes due the Federal Government for the amounts paid to the State, up to 81 per cent of the taxes due the Federal Government for the year 1938; and the Circuit Court of Cook County could and should have ordered the trustee to pay the funds on deposit to the Director of the Department of Labor of the State of Illinois.

Section 602 of the Revenue Act of 1943 (26 U. S. C. 602) provides in part as follows:

> "Section 602. Credit Against Federal Unemployment Taxes for Years 1936 to 1942.—(a) Allowance of Credit Against Tax for 1936, 1937, and 1938.—Against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, any taxpayer shall be allowed credit (if credit is not allowable under section 902 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—
>
> "(1) Without regard to the date of payment, to the extent hereinafter provided in this subsection;
>
> "(2) Without regard to the date of payment, with respect to wages paid after September 19, 1939;
>
> "(3) Without regard to the date of payment, if the assets of the taxpayer were, at any time during the period August 11, 1939, to October 8, 1939, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941, to November 18, 1941, inclusive, in the custody or control of a

receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

[fol. 54] "The provisions of the Social Security Act in force prior to February 11, 1939 (except the provision limiting the credit to amounts paid before the date of filing returns), shall apply to allowance of credit under this subsection:"

These Sections were superseded by Sections 1600 and 1600(a) of the Internal Revenue Code, approved

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* Sections 901 and 902 of the Federal Social Security Act, approved August 14, 1935 (42 U. S. C., C. 7 (Supp.)), provided as follows:

"Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

"(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

"(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

"(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

"Sec. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903."

February 10, 1939. Under Section 902 of the Federal Social Security Act of 1935, a taxpayer who paid contributions into the unemployment fund of a State whose unemployment compensation law was certified by the Social Security Board was entitled to a credit of 90 per cent against the tax imposed by Section 901, providing that contributions were paid into the State fund before the date of filing the return for the tax imposed by Section 904.

Under the provisions of Section 602(a)(1) of the Revenue Act of 1943 a credit is permitted as prescribed by Section 902 to any taxpayer who pays delinquent State taxes for 1936, 1937, or 1938, no matter when such payment is made, except that the amount [fol. 55] of the credit is reduced from 90 per cent to 81 per cent *except that the amount of credit against the tax for the calendar year 1936, 1937, or 1938, for contributions paid after December 6, 1940, shall not (unless the credit is allowable on account of paragraph (2) or (3)) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid before the last day upon which the taxpayer was required under section 905 of such Act to file a return for such year.* The terms used in this subsection shall have the same meaning as when used in title IX of such Act prior to February 11, 1939. The total credit allowable against the tax imposed by section 901 of such Act for the calendar year 1936, 1937, or 1938 shall not exceed 90 per centum of such tax.

"(b) Allowance of Credit Against Tax for 1939, 1940, 1941, and 1942 Where Assets in Control of Court. —Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, 1940, 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive, or (in the case

of credit against the tax for the calendar year 1939) the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941, to November 18, 1941, inclusive, or (in the case of credit against the tax for the calendar year 1940) the period September 21, 1941, to November 18, 1941, inclusive, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction. The provisions of the Federal Unemployment Tax Act (except section 1601(a)(3)), [fol. 564] including such provisions as modified by section 902(e) of the Social Security Act Amendments of 1939, shall apply to allowance of credit *under this subsection*. The terms used in this subsection shall have the same meaning as when used in the Federal Unemployment Tax Act. The total credit allowable against the tax imposed by such Act for the calendar year 1939, 1940, 1941, or 1942 shall not exceed 90 per centum of such tax." (Emphasis ours.)

Under Section 602(a)(1), an employer who pays delinquent taxes for the year 1938 due under a State unemployment compensation law, receives an 81 per cent credit against the Federal tax, no matter when he pays the State tax, and the provision is *retroactive*.

Although the Court applied Section 602(b) in *The People for the Use of Murphy, v. Chicago Waste and Textile Company*, Docket No. 28474, it overlooked the fact that Section 602(a)(1) is equally applicable with respect to the situation existing in this cause. Under Section 602(b), for the years 1939 to 1942 inclusive, a taxpayer is entitled to credit of 90 per cent against the Federal tax, if the assets of the taxpayer were, during specified periods of time, in the custody or control of a receiver; under Section 602(a)(1) any taxpayer is entitled to credit for the years 1936, 1937 and 1938 *without regard to the date of payment* and even though his assets were not in the custody of a receiver or trustee, but is limited to a credit of 81 per cent, instead of 90 per cent.

In other words, the trustee under the general assignment at any time after February 25, 1944 was entitled to pay the full amount of the contributions for the year 1938 due the State of Illinois and to receive a credit against the taxes due the Federal Government up to 81 per cent. On

[fols. 57-58] the basis of the same reasoning as was applied in *The People for the Use of Murphy* v. *Chicago Waste and Textile Company*, Docket No. 28474, this court should hold that the Circuit Court of Cook County could and should have entered an order on February 29, 1944 or at any time thereafter, directing the trustee to pay the State of Illinois, with provisions allowing the trustee a credit of 81 per cent against the claim of the United States.

Consistency requires that the principle applied in *The People for the Use of Murphy* v. *Chicago Waste and Textile Company*, Docket No. 28474, be followed in this cause.

Appellee, therefore, respectfully prays this Court to grant a rehearing in this cause.

Respectfully submitted, George F. Barrett, Attorney General of the State of Illinois, Attorney for Appellee.

William C. Wines, Assistant Attorney General, of Counsel.

[fols. 59-60] In Supreme Court of Illinois

[Title omitted]

Order Denying Petition for Rehearing—September 17, 1945

And now on this day the Court having duly considered the Petition for Rehearing filed herein, and being now full-advised of and concerning the premises, doth overrule the prayer of the Petition and denies a rehearing.

[fol. 61] IN SUPREME COURT OF ILLINOIS

Docket Nos. 28474, 28490.—Agenda 22—March, 1945

The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Chicago Waste & Textile Company et al.—(Carter H. Harrison, Collector of Internal Revenue, Appellant.)—The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Advertising Review Publishing Company et al.—(United States of America, Appellant.)

MODIFIED OPINION—September 17, 1945

Mr. Justice Smith delivered the opinion of the court:

These cases have been consolidated for opinion in this court. The issues involved are such that each case must be considered separately in this opinion. We will first consider cause No. 28474. That case is an appeal by Carter H. Harrison, Collector of Internal Revenue, from an order of the circuit court of Cook county, denying his claim for priority of payment. The claim for which priority of payment is sought is the amount of Federal insurance contribution taxes and Federal unemployment taxes due the Federal government from an insolvent employer. Appellee's claim as Director of Labor of the State of Illinois, against the same fund, is for unemployment compensation contributions, plus penalties, interests and costs due the State of Illinois. The amounts due both appellant and appellee accrued against Chicago Waste & Textile Company. A judgment was entered against that company in favor of one of its creditors in the municipal court of Chicago. An execution was issued and placed in the hands of the bailiff of the municipal court whereupon appellee, as Director of Labor of the State of Illinois, on June 29, 1942, filed this suit in the circuit court of Cook county.

The purpose of the suit was to foreclose the tax lien for the unpaid unemployment compensation contributions due the State, for appointment of a receiver and for an injunction restraining the sale of the property under the [fol. 62] execution. Upon the filing of the complaint, a receiver was appointed, as prayed. Thereafter, the property was liquidated by the receiver. The net amount arising from the liquidation of the property was $677.81, which

the court ordered deposited with the clerk of the circuit court, subject to the further order of the court. The claim of appellant and the claim of appellee were each in an amount in excess of the amount of the funds on deposit.

On November 16, 1942, appellant filed his intervening petition. In this intervening petition, after reciting the filing of the claim in the cause on October 9, 1942, he alleged that by virtue of section 3466 of the Revised Statutes of the United States, his claim was entitled to priority of payment to the extent of the funds on deposit with the clerk. To this intervening petition, appellee filed his answer in which he denied that the claim of appellant was entitled to priority of payment. He alleged that there was due the State of Illinois from the insolvent employer for unemployment compensation contributions, the sum of $738.49, plus penalties; that said contributions were a lien on the property of the insolvent employer; that notice of the lien had been filed in the office of the recorder, as required by statute; that the lien for contributions due the State of Illinois was entitled to priority of payment over the claim of appellant and all other creditors.

Upon a hearing it was adjudged that appellee was entitled to priority to the extent of 90 per cent of the funds on deposit with the clerk, and that appellant was entitled to priority as to the remaining 10 per cent of such funds. To review that order, appellant, as Collector of Internal [fol. 63] Revenue, perfected an appeal to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

Appellant's claim is, in part, for taxes due under section 1600 of the Federal Unemployment Tax Act, and, in part, for Federal insurance contributions under section 804 of title VIII of the Social Security Act. We will consider first that part of the claim arising under the Federal Unemployment Tax Act.

Appellant claims the right of priority of payment of the taxes due the Federal government under section 1600 of the Federal Unemployment Tax Act (26 U. S. C. 1600; formerly title IX of the Social Security Act,) under section 3466 of the Revised Statutes of the United States (31 U. S. C. 191,) which provides that whenever any person indebted to the United States is insolvent, or his estate is insufficient to

pay all his debts, the debts due to the United States shall be first satisfied.

Appellee claims that taxes due the Federal government under the Federal Unemployment Tax Act are not such debts as are comprehended within the provisions of said section 3466 of the Revised Statutes. Appellee further contends that even though the taxes due the Federal government in this case are debts due the United States within the purview of said section 3466, the State of Illinois has a prior lien on the assets of the taxpayer for the amount due the State under section 26(a) of the Unemployment Compensation Act of Illinois. Ill. Rev. Stat. 1943, chap. 48, par. 243.

In the view we take, it will not be necessary to decide either of the above questions in connection with appellant's claim for priority as to the taxes due under the Federal Unemployment Tax Act. Section 1600 of the Federal Unemployment Tax Act (26 U. S. C. 1600) imposes an excise tax [fol. 64] equal to 3 per cent of the total wages paid during each calendar year upon all employers having eight or more employees. Section 1601(a) (26 U. S. C. 1601(a)) of said act provides that the taxpayer may credit against the taxes imposed by section 1600, the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State, which is certified for the taxable year as provided in section 1603. The Illinois Unemployment Compensation Act was approved and certified by the Federal Social Security Board as provided in said section 1603. Section 1601(c) provides that the total amount of credits allowed "shall not exceed 90 per centum of the tax against which such credits are allowed." Section 1601(a)(3) provides that such credit shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required by section 1604 to file a return for such year "except that credit shall be permitted for contributions paid after such last day, but before July 1 next following such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last date." Section 1604 (26 U. S. C. 1604) fixes January 31, as the last day on which returns for the preceding calendar year shall be filed.

The claim of appellant is for taxes due the Federal government accruing in the years 1941 and 1942. The last due date of the return for the year 1941, under section 1604, was January 31, 1942. The last due date of the return for the year 1942 was January 31, 1943.

Section 602(b) of the Revenue Act of 1943 (26 U. S. C. 602(b),) provides: "Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, 1940, [fol. 65] 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive * * * in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction * * *."

The record in this case shows that the receiver was appointed on June 29, 1942. The receiver qualified on June 30, 1942. This was prior to the expiration of the last day on which the taxpayer was entitled to a credit on the Federal taxes for the year 1941, for payments made to the State. The assets were, therefore, in the custody and under the control of a receiver during the period from the last day upon which the taxpayer was required to file a return of the tax against which credit is claimed and June 30 next following such last day, inclusive. Such assets were also in the hands of the receiver during all the time subsequent to that period. Under section 602(b) of the Revenue Act of 1943, all limitations as to the time of payment, when the assets were in the hands of a receiver, were removed. The receiver was, therefore, at any time after his appointment, entitled to pay contributions for the years 1941 and 1942 to the State and was entitled to credit on the taxes due the Federal government for the amounts paid to the State, up to 90 per cent of the taxes due the Federal government, for both years.

This brings us to a consideration of cause No. 28490. This case presents the questions on a different factual record from that presented by the record in cause No. 28474. [fol. 66] This case is an appeal by the United States from a decree entered by the Circuit court of Cook county. The

appeal was also taken to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

The record shows that on January 9, 1939, Advertising Review Publishing Company made a general assignment of its assets and property to William Fisher, trustee, for the benefit of its creditors; that he had reduced the assets to cash and had remaining in his hands the net amount of $1253.11; that Carter H. Harrison, Collector of Internal Revenue, had filed claims with the trustee for capital stock tax and claims for taxes accruing under the Federal Unemployment Tax Act, aggregating more than the total amount of funds in the hands of the trustee. The Director of the Department of Labor of the State of Illinois also filed claims with the trustee for unemployment compensation contributions due the State of Illinois in the amount of $721.29, plus interest.

On February 11, 1942, Fisher, the trustee, filed his complaint in this cause in the nature of an interpleader, asking for instructions of the court as to the distribution of the funds in his hands. The Collector of Internal Revenue and the Director of the Department of Labor of the State of Illinois were both made parties defendant. On April 2, 1943, the Director filed his complaint in the circuit court in equity for the purpose of foreclosing his lien on the assets in the hands of the trustee for the unemployment compensation contributions due the State of Illinois. These two cases were thereafter consolidated. On order of the court, the funds in the hands of the trustee were impounded with the clerk of the court to abide the result of the suit. On motion and by leave granted, the United [fol. 67] States of America was substituted as a party to the suit in lieu of the Collector of Internal Revenue, and he was dismissed out of the case.

Upon a hearing, a decree was entered finding that the lien of the Director of Labor of the State of Illinois on the assets involved gave to him priority of payment to the extent of 90 per cent of the funds on deposit with the clerk and that the United States was entitled to priority of payment as to the remaining 10 per cent of said funds on deposit. From this decree the United States perfected the appeal.

The contention of appellee is that he was entitled to priority of payment to the extent of 81 per cent of the funds on deposit with the clerk under section 602(a) of the Revenue

Act of 1943. (26 U. S. C. 602(a).) Section 602(a), in so far as material to the present inquiry, is as follows:

"Section 602. Credit Again-- Federal Unemployment Taxes for Year 1936 to 1942.—(a) Allowance of Credit Against Tax for 1936, 1937, and 1938,—Against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, any taxpayer shall be allowed credit (if credit is not allowable under section 902 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—

"(1) Without regard to the date of payment, to the extent hereinafter provided in this subsection;

"(2) Without regard to the date of payment with respect to wages paid after September 19, 1939;

"(3) Without regard to the date of payment, if the assets of the taxpayer were, at any time during the period August 11, 1939, to October 8, 1939, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941, to November 18, 1941, inclusive, in [fol. 68] custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

"The provisions of the Social Security Act in force prior to February 11, 1939, (except the provision limiting the credit to amounts paid before the date of filing returns), shall apply to allowance of credit under this subsection; except that the amount of credit against the tax for the calendar year 1936, 1937, or 1938, for contributions paid after December 6, 1940, shall not (unless the credit is allowable on account of paragraph (2) or (3) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid before the last day upon which the taxpayer was required under section 905 of such Act to file a return for such year."

As we construe this section, it only removes the restriction as to the time of payment of taxes on wages accrued in the years 1936, 1937, and 1938, in cases where the assets of the taxpayer were in the custody or control of a receiver, trustee or other fiduciary appointed by, or under the control of a court of competent jurisdiction, during the periods mentioned in paragraph (3) of subsection (a) of said sec-

tion 602. As so construed, it has no application to the facts in this case. The assets of the insolvent taxpayer were not in the custody or control of a receiver during any period mentioned in section 602(a) (3) of the Revenue Act of 1943. The taxes with which we are here concerned were not subject to the provisions of that section.

Appellant claims the right of priority of payment of the taxes due the United States because of the priority granted to the United States by section 3466 of the Revised Statutes of the United States (31 U. S. C. 191,) which reads as follows: "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, [fol. 69] in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

Appellee, in an effort to demonstrate that it was not the intention of Congress that claims for taxes due under the Federal Unemployment Tax Act should be subject to the priority of payment provisions of said section 3466, has presented an interesting and illustrative argument. He has analyzed and presented both the State and Federal acts and their relations to each other. It is pointed out that the Federal act is not in itself a complete unemployment compensation law; that it merely provides for the collection of payroll taxes, but makes no provision for the payment of unemployment compensation to employees; that this function is left entirely to the States. It is further pointed out that section 902 of the Social Security Act of 1935, which is section 1601 of the Internal Revenue Code of 1939, allowed a credit against the Federal taxes imposed for payments made into an approved State unemployment compensation fund to the extent of 90 per cent of the amount of the taxes due under the Federal act, if such payments were made to the State fund before the last due date of the Federal return of the employer; that the last due date of such return was January 31 of the year following that in which the wages were paid.

It is further pointed out that if payment of the State contributions was not made before the due date of the Federal return, and payment was made thereafter, but before June 30 next following such due date, a credit of 90 per cent [fol. 70] of the credit, or 81 per cent, is allowed; that if the assets of the taxpayer are in the custody or control of a court of competent jurisdiction at any time between the last due date of the return and June 30 following, this limitation is removed and the full credit of 90 per cent is allowed; that by the Revenue Act of 1940, such limitation on the time of the payment, in order to obtain the credit, was extended to December 6, 1940; that if the assets of the taxpayer were in the hands of a receiver at any time during the fifty-nine day period following December 6, 1940, and such State contributions were paid by the receiver during that time, he would be entitled to credit for the amount paid to the State, up to 90 per cent of the Federal taxes; that by the Revenue Acts of 1941 and 1943, this policy was continued and the limitations as to the time of payment, in order to obtain the credit, were further extended.

From this it is argued that the provisions relating to credits allowed on the Federal taxes for unemployment contributions paid to the State, up to 90 per cent of the taxes due the Federal government, were intended to encourage the employer to promptly pay his State contributions; that it was not contemplated by Congress in the enactment of this legislation that more than 10 per cent of the 3 per cent Federal payroll taxes should belong to the Federal government; that the purpose of Congress in providing that 10 per cent of the Federal taxes be paid to the Federal government, regardless of the amount which the txpayer might pay to the State, was to create a fund for the use of the Federal government in the administration of the Federal act and its supervision of the administration of the State acts by the several States.

From this it is said that in reality the Federal taxes are levied only for the purpose of co-ordinating the adminis- [fol. 71] tration of the acts of the several States with the Federal act, under the supervision of the National government. It is further contended that the primary purpose of the Federal act was to encourage the States to pass State unemployment compensation acts and to assist the States in the administration of such acts.

Upon this basis it is contended that it was the intention of Congress that the Federal taxes, except as to the amount of 3/10 of one per cent of the payrolls were, in fact, levied for the use and benefit of the States and that, other than the 10 per cent for which no credit can be taken for the payments into a State unemployment compensation fund, the Federal government has no interest therein; that such 10 per cent reserved to the Federal government is for the sole purpose of defraying the expenses of administering the acts.

This argument, however plausible and logical it may seem, loses sight of the fact that the taxes imposed by the Federal act at the rate of 3 per cent on the payrolls of those employers having eight or more employees, are taxes imposed by, and which belong to, the Federal government. All of the provisions pointed out concerning credits for taxes paid into the unemployment compensation fund of the State relate to the administration of the act. They are administrative in character. By the Federal act, taxes are levied at the rate of 3 per cent on the payroll of every employer in the United States employing eight or more persons. The act was sustained by the Supreme Court of the United States in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 57 S. Ct. 883, because the payments exacted thereunder were found to be taxes levied under the powers conferred on Congress by section 8 of article I of the constitution. Such payments were held to be excise taxes.

Under the act, therefore, excise taxes are levied by the Congress upon employers at the rate of 3 per cent of their payrolls. The fact that the act makes provision for a reduction in the amount of the taxes, or a surrender or waiver [fol. 72] of a portion thereof, equal to the amount paid by the taxpayer into an approved State unemployment compensation fund, up to 90 per cent of the taxes due, does not change the character of the act as one levying or imposing taxes. The full amount of 3 per cent of the payroll constitutes taxes due the Federal government. The waiver of a portion thereof for the purpose of encouraging employers to promptly pay their State unemployment compensation contributions does not change the character of payments exacted by the Federal act. In the first instance, 100 per cent of the taxes levied constitute taxes due the Federal government. The full amount continues to be taxes due the Federal government either until it is all paid

to the Federal government, or 90 per cent is paid to the State and the balance to the Federal government. The provisions of the act for credits equal to the amount paid to the State, up to 90 per cent of the taxes due the Federal government, being administrative in character, do not change the character of the taxes imposed. They are still taxes due the Federal government and constitute a debt due to the United States within the purview of section 3466 of the Revised Statutes.

The cases cited and relied upon by appellee are not in point. Those cases involved payments due the United States of an entirely different character from those here involved. *United States* v. *Guaranty Trust Co.* 280 U. S. 478, 50 S. Ct. 212, involved money due the United States under the Transportation Act of 1920.

Mellon v. *Michigan Trust Co.* 271 U. S. 236, 46 S. Ct. 511, involved a claim due the Director General of Railroads for transportation charges against an insolvent corporation. [fol. 73] In *United States* v. *Marxen*, 207 U. S. 200; 59 S. Ct. 811, the claim was for money due the Federal Housing Administrator. In neither of those cases was the claim for taxes due the United States.

It has been repeatedly held by the Supreme Court that taxes due the United States are debts due the United States, within the meaning of section 3466 of the Revised Statutes. *Price* v. *United States*, 269 U. S. 492, 46 S. Ct. 180; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 9 L. ed. 1017; *United States* v. *Bank of North Carolina*, 6 Pet. 29, 8 L. ed. 29.

Appellee also cites and relies on the case of *Rivard* v. *Bijou Furniture Co.* 67 R. I. 251, 21 Atl. 2d 563. It is true this case sustains the contentions of appellee. However, we think the court in that case overlooked the fact that taxes due under the Federal Unemployment Tax Act are taxes due the United States and, consequently, are debts due the United States within the scope of section 3466 of the Revised Statutes.

It is elementary that the priority given the United States by section 3466 cannot be impaired or superseded by State laws. *United States* v. *Oklahoma*, 261 U. S. 253, 67 L. ed. 638.

As to that part of appellant's claim in case No. 28474 which is for Federal insurance contribution taxes, such taxes are not subject to the credits allowed under section

602(b) of the Revenue Act of 1942. It follows that the claim of appellant in cause No. 28490 and that portion of appellant's claim in cause No. 28474 which is for Federal insurance contribution taxes were debts due the United States and were entitled to priority of payment out of the assets of the insolvent debtors, unless the State of Illinois had such a lien on such assets as would remove them [fol. 74] from the priority rights granted by section 3466 of the Revised Statutes.

It is claimed by appellee that he did have such a lien. This contention is based upon section 26(a) of the Unemployment Compensation Act of Illinois. (Ill. Rev. Stat. 1943, chap. 48, par. 243.) That section, in so far as material, reads as follows: "A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

It is contended by appellant that the lien given by this section of the statute is not a perfected, fixed lien; that at most it is merely an inchoate right to a lien. It will be remembered that the only thing done by the Director to establish or to enforce such lien, as against the property of the debtor, was the filing of this suit on April 2, 1943, whereas, the assignment was made by the insolvent debtor on January 9, 1939. The right to priority of payment under section 3466 attaches, if at all, at the time of the assignment.

In the very late case of *United States* v. *Waddill, Holland & Flinn*, in an opinion filed January 2, 1945, the Supreme Court of the United States had before it a similar question. (65 S. Ct. 304.) The case arose in Virginia. The debtor had made an assignment for the benefit of [fol. 75] creditors. Claims were made by the United States for unpaid taxes under the Federal Unemployment Tax Act and for a debt arising out of a Federal Housing Administration transaction. The landlord of the debtor, twelve days after the assignment was made, obtained a distress warrant,

which was levied on the debtor's property. The applicable provisions of the statutes of Virginia gave to the landlord the right to levy distress for six months rent upon "any goods of the lessee * * * found on the premises, or which may have been removed therefrom not more than thirty days * * * for not more than six months rent." The distraining landlord claimed a lien on the property of the debtor and a priority of payment over the claim of the Federal government, based upon the lien given him by statute on the goods of the insolvent debtor. The Supreme Court of Virginia held that the provisions of the statute of that State, referred to, "give the landlord a lien which is fixed and specific and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment which are merely remedies for enforcement." In disposing of that question, the Supreme Court of the United States said:

"The words of section 3466 are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States. Thelusson v. Smith, 2 Wheat. 396, 423, 4 L. Ed. 271; United States v. Texas, supra, 314 U. S. at page 484; 62 S. Ct. at page 352, 86 L. Ed. 356. But this court in the past has recognized that certain exceptions could be read into this statute. The question has not been expressly decided, however, as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency [fol. 76] or voluntary assignment. * * * It is within this suggested exception that the landlord and the municipality seek to bring themselves. Once again, however, we do not reach a decision as to whether such an exception is permissible for we do not believe that the asserted liens of the landlord and the municipality were sufficiently specific and perfected on the date of the voluntary assignment to cast any serious doubt on the priority of the claim of the United States. * * *

"The Supreme Court of Appeals of Virginia has here held that these sections 'give the landlord a lien which is fixed and specific, and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment, which are merely remedies for enforcing it.' 182 Va. at page 363, 28 S. E. 2d at page 746. It has also held that such a lien 'relates back to the beginning of the

tenancy,' 182 Va. at page 364, 28 S. E. 2d at page 746, thus giving it force and effect on date of the voluntary assignment. These interpretations of the Virginia statutes, as propositions of state law, are binding. But it is a matter of federal law as to whether a lien created by state statute is sufficiently specific and perfected to raise questions as to the applicability of the priority given the claims of the United States by an act of Congress. If the priority of the United States is ever to be displaced by local statutory lien, federal courts must be free to examine the lien's actual legal effect upon the parties. A state court's characterization of a lien as specific and perfected, however conclusive as a matter of state law, cannot operate by itself to impair or supercede a long-standing Congressional Declaration of priority. * * *

"Tested by its legal effect under Virginia law, the landlord's lien in this instance appeared to serve 'merely as a caveat of a more perfect lien to come.' People of State of New York v. Maclay, supra, 288 U. S. at page 294, 53 S. Ct. [fol. 77] at page 324, 77 L. Ed. 754. As of the date of the voluntary assignment, it was neither specific nor perfected. It gave the landlord only a general power over unspecified property rather than an actual interest in a definitive portion or portions thereof. * * *

"Nor was the statutory lien perfected as a matter of actual fact, regardless of how complete it may have been as a matter of state law. The tenant was divested of neither title nor possession by the silent existence of the landlord's statutory lien on the date of the assignment. Only after the lien was actually asserted and an attachment or a distraint levied, enabling the landlord to satisfy his claim out of the seized goods, could it be argued that such goods severed themselves from the general and free assets of the tenant from which the claims of the United States were entitled to priority of payment. Prior to that time the lien operated to do no more than prevent the removal of goods from the premises by certain classes of persons, Va. Code par. 5524, and give the landlord priority in distribution under state law provided that the goods remained on the premises. Such a potential, inchoate lien could not disturb the clear command of section 3466 of the Revised Statutes. Something more than a 'caveat of a more perfect lien to come' was necessary."

It seems to us that the above language of the court is conclusive in this case. We are forced to the conclusion that the taxes due the Federal government were debts due the United States within the purview of section 466 of the Revised Statutes. It is equally clear that appellee did not have such a lien upon assets of the insolvent debtor, under section 26(a) of the Unemployment Compensation Act of Illinois, as to give him priority of payment over the claim [fols. 78-79] of the Federal government for Federal insurance contribution taxes in cause No. 28474, or the claim of appellant in cause No. 28490. In view of this, appellant was entitled to priority of payment over the claim of the State of Illinois.

In cause No. 28474, the judgment of the circuit court is reversed and the cause is remanded to that court, with directions to enter an order directing the payment of the funds on deposit first to appellant for that portion of his claim which is for Federal insurance contribution taxes, with lawful interest thereon, and any balance remaining to the Director of the Department of Labor of the State of Illinois. The order will provide that the amount paid to the Director be credited on the claim of appellant against the insolvent debtor for unemployment compensation taxes.

In cause No. 28490, the decree of the circuit court is reversed and the cause is remanded to that court, with directions to enter a decree finding that the United States is entitled to priority of payment to the extent of the funds on deposit, and ordering distribution accordingly.

Reversed and remanded, with directions.

[fols. 80-81] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER RECALLING AND STAYING MANDATE—Filed October 17, 1945

Upon motion of appellee, it is ordered that the mandate in the above entitled cause be recalled and stayed until December 16, 1945.

Enter:

(S.) Francis S. Wilson, Justice of the Illinois Supreme Court.

October 16, 1945.

[fol. 82] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

PRAECIPE FOR RECORD FOR USE ON APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR WRIT OF CERTIORARI—Filed December 5, 1945

The appellee in the above entitled cause hereby requests and directs you to prepare and duly certify a transcript of record in the above entitled cause and to include therein copies only of the following items:

1. Appellant's abstract of record.
2. Original opinion of the court, filed May 23, 1945.
3. Judgment of this court.
4. Notice of intention to file petition for rehearing.
5. Petition for rehearing.
6. Order denying petition for rehearing, with modifications.

[fol. 83] 7. Final opinion, including modifications ordered at the time of the denial of the petition for rehearing, filed September 17, 1945.

8. Second judgment rendered September 17, 1945, (if such judgment appears of record).

9. Order re stay of mandate.

10. Heading of Argument I, which appears in bold face on page 6 of Appellee's Brief, in the Illinois Supreme Court.

11. Heading of Argument III, which appears in bold face on page 29 of Appellee's Brief, in the Illinois Supreme Court.

12. This praecipe for record, with proof of service.

13. Clerk's certificate.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Appellee.

Proof of Service

Received a copy of the above and foregoing Praecipe for Record and proof of service thereof, this 4th day of December, A. D. 1945.

J. Albert Woll, Attorney for Appellant, United States Attorney.

[fol. 84] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 85] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 16th, 1946.

Frank Murphy, Associate Justice of the Supreme Court of the United States.

Dated this 4th day of December, 1945.

[fol. 86] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 25, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.